

Criminal Records - Employment Barrier Crimes

Introduction

State law (§§ 32.1-126.01 and 32.1-162.9:1 Employment for compensation of persons convicted of certain offenses prohibited; criminal records check required; suspension or revocation of license.) requires that each nursing facility, home care or home health organization, and hospice obtain a criminal record background check on new hires within 30 days of employment. The law also requires that these background checks be obtained using the Central Criminal Records Exchange from the Virginia Department of State Police. See Appendix 2 for a copy of each law.

Criminal convictions, verified through a criminal record check, that disqualify an applicant for employment

Generally, criminal convictions for offenses involving abuse or neglect disqualify an applicant. The following list further specifies these offenses but should not be considered comprehensive. See Appendix I for offense references in the *Code of Virginia*.

- ✓ Murder and manslaughter
- ✓ Malicious wounding by a mob
- ✓ Kidnapping and abduction with intent to deprive of personal liberty or to withhold or with intent to extort money, or with intent to defile, and abduction of a child under 16 for concubinage or prostitution
- ✓ Assaults and bodily wounding, including:
 - shooting, stabbing, or wounding with the intent to maim or kill
 - malicious or unlawful wounding of a law enforcement officer or firefighter
 - aggravated malicious wounding
 - reckless endangerment by throwing objects from places higher than one story
 - maiming of another resulting from driving while intoxicated
 - malicious bodily injury by use of a caustic agent, or use of any explosive, or fire
 - possession of infectious biological substances
 - shooting, stabbing, cutting, or wounding while committing, or attempting to commit, a felony
 - use, or display, of a firearm in the commission of a felony
 - poisoning or attempted poisoning
 - adulteration of food, drink, cosmetics, and drugs
 - bodily injuries by prisoners, parolees, or probationers
 - pointing a laser at a law enforcement officer
 - hazing

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- reckless handling of firearms
- allowing children access to loaded firearms
- assault and battery or simple assault
- assault and battery against a member of the family or household
- ✓ Robbery
- ✓ Carjacking
- ✓ Threats of death or bodily injury
- ✓ Felony stalking
- ✓ Sexual assault, including:
 - rape
 - carnal knowledge of a child 13-15 years of age
 - carnal knowledge of a minor in custody
 - carnal knowledge of an inmate, parolee, probationer, or pre-trial or post-trial offender
 - forcible sodomy
 - inanimate object sexual penetration
 - marital sexual assault
 - aggravated sexual battery
 - infected sexual battery
 - sexual battery
 - attempted rape, forcible sodomy, object sexual penetration, sexual battery, or aggravated sexual battery
- ✓ Arson, including:
 - setting fire to a dwelling, occupied hotel, hospital, mental health facility, railroad car, boat, vessel or river craft, jail, church, or other house in which persons live
 - setting fire to a meetinghouse
 - maliciously or with intent to defraud an insurance company or other person, setting fire to any other building, or structure, or to personal property
 - bomb or arson threats against buildings or other structures or against means of transportation
 - manufacturing, possessing, or using firebombs or other explosive material
 - maliciously or intentionally setting fire to woods, fences, grass, etc.
 - setting off smoke bombs in public buildings
 - carelessly damaging property by fire
 - setting woods, brush, grass, etc. on fire and intentionally allowing fire to escape to lands not his own, whereby property of another is damaged or jeopardized
 - burning building while in building with intent to commit felony
 - false threat to bomb or damage building or means of transportation
- ✓ Drive by shooting
- ✓ Use of a machine gun in a crime of violence

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- ✓ Aggressive use of a machine gun
- ✓ Use of a sawed-off shotgun in a crime of violence
- ✓ Pandering, including:
 - pimping
 - enticing persons to become engaged in prostitution, and
 - as legal guardian, consenting to minor's being detained for prostitution or unlawful sexual intercourse, compelling one to be married against his or her will
- ✓ Crimes against nature involving children
- ✓ Incest
- ✓ Taking indecent liberties with children including:
 - fondling
 - indecent exposure
 - propositioning a child to engage in such behavior or in sexual intercourse
 - enticing minors to be subject of sexually explicit visual material
- ✓ Abuse and neglect of children
- ✓ Failure to secure medical attention for an injured child
- ✓ Obscenity offenses including:
 - production, publication, sale, or possession with the intent to distribute sexually explicit items involving children
 - employing, assisting, or permitting a minor to engage in obscenity
- ✓ Possession of child pornography
- ✓ Electronic facilitation of pornography
- ✓ Abuse and neglect of incapacitated adults
- ✓ Delivery of drugs to prisoners
- ✓ Escape from jail
- ✓ Felonies by prisoners
- ✓ An equivalent offense in another state.

NOTE: The *Code of Virginia* specifies that incomplete or false statements in an applicant's sworn statement or affirmation disclosing any criminal convictions or pending charges constitutes a misdemeanor offense. Subsequent disclosure or discovery of a relevant criminal conviction or convictions may also disqualify the applicant from being hired and from continuing on in the hired employment.

Convictions that would NOT disqualify an applicant

Under the law, convictions for offenses unrelated to abuse or neglect would not disqualify an applicant for employment.

Even if the applicant has been convicted of a barrier crime, it may not always prevent employment. An applicant who has *one misdemeanor* conviction specified in the law may be

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hired if:

- (i) The criminal offense did NOT involve abuse or neglect; AND
- (ii) Five years have lapsed since the conviction occurred.

However, other convictions may disqualify an applicant on the basis of *a facility's established hiring, personnel, or other policies*.

NOTE: This guideline should not be taken as definitive. For further clarification regarding criminal offenses, refer to Title 18.2 (Crimes and Offenses Generally) of the *Code of Virginia*, or seek a legal opinion.

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APPENDIX I
BARRIER CRIMES PROHIBITING EMPLOYMENT IN NURSING FACILITIES

NOTE: This list is provided as a guide only. For further clarification regarding criminal offenses, refer to Title 18.2 Crimes and Offenses Generally of the *Code of Virginia* or seek a legal opinion.

State Code	Offense - Felonies
18.2 - 30	Murder and manslaughter declared felonies
18.2 - 31	Capital murder defined
18.2 - 32	First and second degree murder defined
18.2 - 32.1	Murder of a pregnant woman
18.2 - 33	Felony homicide defined; punishment
18.2 - 35	How voluntary manslaughter punished
18.2 - 36	How involuntary manslaughter punished
18.2 - 36.1	Certain conduct punishable as involuntary manslaughter
18.2 - 37	How and where homicide prosecuted and punished if death occurs without the Commonwealth
18.2 - 41	Shooting, stabbing, etc. with intent to maim, kill, etc. by mob
18.2 - 47	Abduction and kidnapping defined; punishment
18.2 - 48	Abduction with intent to extort money or for immoral purposes
18.2 - 51	Shooting, stabbing, etc. with intent to maim, kill, etc.
18.2 - 51.1	Malicious bodily injury to law enforcement officers, firefighters, search and rescue personnel, or emergency medical services providers; penalty; lesser included offense
18.2 - 51.2	Aggravated malicious wounding
18.2 - 51.3	Prohibition against reckless endangerment of others by throwing objects from places higher than one story; penalty
18.2 - 51.4	Maiming, etc., of another resulting from driving while intoxicated
18.2 - 52	Malicious bodily injury by means of any caustic substance or agent of use of any explosive or fire
18.2 - 52.1	Possession of infectious biological substances or radiological agents, penalties
18.2 - 53	Shooting, etc., in committing or attempting a felony
18.2 - 53.1	Use or display of firearm in committing felony
18.2 - 54.1	Attempts to poison
18.2 - 54.2	Adulteration of food, drink, drugs, cosmetics, etc.; penalty
18.2 - 55	Bodily injuries caused by prisoners, state juvenile probationers and state and local adult probationers or adult parolees
18.2 - 56	Hazing unlawful; civil and criminal liability, duty of school, etc. officials
18.2 - 56.1	Reckless handling of firearms

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State Code	Offense - Felonies
18.2 - 56.2	Allowing access to firearms by children
18.2 - 57	Assault and battery
18.2 - 57.01	Pointing a laser at law-enforcement officer
18.2 - 57.2	Assault and battery against a family or household member
18.2 - 58	Robbery
18.2 - 58.1	Carjacking
18.2 - 60	Threats of death or bodily injury to a person or member of his family; threats to commit serious bodily harm to persons on school property; penalty
18.2 - 60.3	Felony stalking
18.2 - 61	Rape
18.2 - 63	Carnal knowledge of child between 13 and 15 years of age
18.2 - 64.1	Carnal knowledge of certain minors
18.2 - 64.2	Carnal knowledge of inmate, parolee, probationer, detainee, or pretrial or posttrial offender; penalty
18.2 - 67.1	Forcible sodomy
18.2 - 67.2	Object sexual penetration
18.2 - 67.2:1	Marital sexual assault
18.2 - 67.3	Aggravated sexual battery
18.2 - 67.4	Sexual battery
18.2 - 67.4:1	Infected sexual battery
18.2 - 67.5	Attempted rape, forcible sodomy, object sexual penetration, aggravated sexual battery, and sexual battery
18.2 - 77	Burning or destroying dwelling house, etc.
18.2 - 79	Burning or destroying meeting house, etc.
18.2 - 80	Burning or destroying any other building or structure (valued at \$200 or more)
18.2 - 81	Burning or destroying personal property, standing grain, etc. (valued at \$200 or more)
18.2 - 82	Burning building or structure while in such building or structure with intent to commit felony
18.2 - 83	Threats to bomb or damage buildings or means of transportation, false information as to danger to such buildings, etc. (if person is older than 15 years of age)
18.2 - 84	Causing, inciting, etc., commission of act proscribed in §18.2-83
18.2 - 85	Manufacture, possession, use, etc. of fire bombs or explosive material or devices
18.2 - 86	Setting fire to woods, fences, grass, etc.
18.2 - 87	Setting woods, etc. on fire intentionally whereby another is damaged or jeopardized
18.2 - 87.1	Setting of chemical bombs capable of producing smoke in certain public buildings
18.2 - 88	Carelessly damaging property by fire
18.2 - 286.1	Shooting from vehicles so as to endanger persons; penalty

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State Code	Offense - Felonies
18.2 - 289	Use of machine gun for a crime of violence
18.2 - 290	Use of machine gun for aggressive purpose
18.2 - 300	Possession or use of a sawed-off shotgun or rifle
18.2 - 314	Failure to secure medical attention for injured child
18.2 - 355	Taking, detaining, etc., person for prostitution, etc., or consenting thereto
18.2 - 361	Crimes against nature involving children
18.2 - 366	Adultery and fornication by persons forbidden to marry; incest
18.2 - 369	Abuse and neglect of incapacitated adults
18.2 - 370	Taking indecent liberties with children
18.2 - 370.1	Taking indecent liberties with child by person in custodial or supervisory relationship
18.2 - 371.1	Abuse and neglect of children
18.2 - 374.1	Production, publication, sale, possession with intent to distribute, financing, etc., of sexually explicit items involving children; presumption as to age; severability
18.2 - 374.1:1	Possession of child pornography
18.2 - 374.3	Use of communication systems to facilitate certain offences involving children
18.2 - 474.1	Delivery of drugs, firearms, explosives, etc. to prisoners
18.2 - 477	Prisoner escape from jail; how punished
53.1 - 203	Felonies by prisoners
	Equivalent offense in another state

APPENDIX II

Excerpted from the *Code of Virginia*

For Nursing Facilities

§ 32.1-126.01. Employment for compensation of persons convicted of certain offenses prohibited; criminal records check required; suspension or revocation of license. -

A. A licensed nursing home shall not hire for compensated employment, persons who have been convicted of murder or manslaughter as set out in Article 1 (§ [18.2-30](#) et seq.) of Chapter 4 of Title 18.2, malicious wounding by mob as set out in § [18.2-41](#), abduction as set out in subsection A of § [18.2-47](#), abduction for immoral purposes as set out in § [18.2-48](#), assaults and bodily woundings as set out in Article 4 (§ [18.2-51](#) et seq.) of Chapter 4 of Title 18.2, robbery as set out in § [18.2-58](#), carjacking as set out in § [18.2-58.1](#), threats of death or bodily injury as set out in § [18.2-60](#), felony stalking as set out in § [18.2-60.3](#), sexual assault as set out in Article 7 (§ [18.2-61](#) et seq.) of Chapter 4 of Title 18.2, arson as set out in Article 1 (§ [18.2-77](#) et seq.) of Chapter 5 of Title 18.2, drive by shooting as set out in § [18.2-286.1](#), use of a machine gun in a crime of violence as set out in § [18.2-289](#), aggressive use of a machine gun as set out in § [18.2-290](#), use of a sawed-off shotgun in a crime of violence as set out in subsection A of § [18.2-300](#), pandering as set out in § [18.2-355](#), crimes against nature involving children as set out in § [18.2-361](#), incest as set out in § [18.2-366](#), taking indecent liberties with children as set out in § [18.2-370](#) or § [18.2-370.1](#), abuse and neglect of children as set out in § [18.2-371.1](#), failure to secure medical attention for an injured child as set out in § [18.2-314](#), obscenity offenses as set out in § [18.2-374.1](#), possession of child pornography as set out in § [18.2-374.1:1](#), electronic facilitation of pornography as set out in § [18.2-374.3](#), abuse and neglect of incapacitated adults as set out in § [18.2-369](#), employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ [18.2-372](#) et seq.) of Chapter 8 of Title 18.2 as set out in § [18.2-379](#), delivery of drugs to prisoners as set out in § [18.2-474.1](#), escape from jail as set out in § [18.2-477](#), felonies by prisoners as set out in § [53.1-203](#), or an equivalent offense in another state. However, a licensed nursing home may hire an applicant who has been convicted of one misdemeanor specified in this section not involving abuse or neglect, if five years have elapsed following the conviction.

Any person desiring to work at a licensed nursing home shall provide the hiring facility with a sworn statement or affirmation disclosing any criminal convictions or any pending criminal charges, whether within or without the Commonwealth. Any person making a materially false statement when providing such sworn statement or affirmation regarding any such offense shall be guilty upon conviction of a Class 1 misdemeanor. Further dissemination of the information provided pursuant to this section is prohibited other than to a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

A nursing home shall, within 30 days of employment, obtain for any compensated

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employees an original criminal record clearance with respect to convictions for offenses specified in this section or an original criminal history record from the Central Criminal Records Exchange. The provisions of this section shall be enforced by the Commissioner. If an applicant is denied employment because of convictions appearing on his criminal history record, the nursing home shall provide a copy of the information obtained from the Central Criminal Records Exchange to the applicant.

The provisions of this section shall not apply to volunteers who work with the permission or under the supervision of a person who has received a clearance pursuant to this section.

B. A person who complies in good faith with the provisions of this section shall not be liable for any civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct.

C. A licensed nursing home shall notify and provide to all students a copy of the provisions of this section prior to or upon enrollment in a certified nurse aide program operated by such nursing home. (1992, c. 844; 1993, cc. 17, 657; 1999, c. 637; 2001, c. 329; 2003, c. 517; 2006, cc. 701, 764.)

For Home Care Organizations, Home Health Agencies, and Hospice Programs

§ 32.1-162.9:1. Employment for compensation of persons convicted of certain offenses prohibited; criminal records check required; suspension or revocation of license. -

A. A licensed home care organization as defined in § [32.1-162.7](#) or any home care organization exempt from licensure under subdivision 3 a, b, or c of § [32.1-162.8](#) or any licensed hospice as defined in § [32.1-162.1](#) shall not hire for compensated employment, persons who have been convicted of murder or manslaughter as set out in Article 1 (§ [18.2-30](#) et seq.) of Chapter 4 of Title 18.2, malicious wounding by a mob as set out in § [18.2-41](#), abduction as set out in subsection A of § [18.2-47](#), abduction for immoral purposes as set out in § [18.2-48](#), assaults and bodily woundings as set out in Article 4 (§ [18.2-51](#) et seq.) of Chapter 4 of Title 18.2, robbery as set out in § [18.2-58](#), carjacking as set out in § [18.2-58.1](#), threats of death or bodily injury as set out in § [18.2-60](#), felony stalking as set out in § [18.2-60.3](#), sexual assault as set out in Article 7 (§ [18.2-61](#) et seq.) of Chapter 4 of Title 18.2, arson as set out in Article 1 (§ [18.2-77](#) et seq.) of Chapter 5 of Title 18.2, drive by shooting as set out in § [18.2-286.1](#), use of a machine gun in a crime of violence as set out in § [18.2-289](#), aggressive use of a machine gun as set out in § [18.2-290](#), use of a sawed-off shotgun in a crime of violence as set out in subsection A of § [18.2-300](#), pandering as set out in § [18.2-355](#), crimes against nature involving children as set out in § [18.2-361](#), incest as set out in § [18.2-366](#), taking indecent liberties with children as set out in § [18.2-370](#) or § [18.2-370.1](#), abuse and neglect of children as set out in § [18.2-371.1](#), failure to secure medical attention for an injured child as set out in § [18.2-314](#), obscenity offenses as set out in § [18.2-374.1](#), possession of child pornography as set out in § [18.2-374.1:1](#), electronic facilitation of pornography as set out in § [18.2-374.3](#), abuse and neglect of incapacitated adults as set out in § [18.2-369](#), employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ [18.2-372](#) et seq.) of Chapter 8 of Title 18.2 as set out in § [18.2-379](#), delivery of drugs to prisoners as set out in § [18.2-474.1](#), escape from jail as set out in § [18.2-477](#), felonies by

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prisoners as set out in § [53.1-203](#), or an equivalent offense in another state.

However, a home care organization or hospice may hire an applicant convicted of one misdemeanor specified in this section not involving abuse or neglect, if five years have elapsed since the conviction.

Any person desiring to work at a licensed home care organization as defined in § [32.1-162.7](#) or any home care organization exempt from licensure under subdivision 3 a, b, or c of § [32.1-162.8](#) or any licensed hospice as defined in § [32.1-162.1](#) shall provide the hiring facility with a sworn statement or affirmation disclosing any criminal convictions or any pending criminal charges, whether within or without the Commonwealth. Any person making a materially false statement when providing such sworn statement or affirmation regarding any such offense shall be guilty upon conviction of a Class 1 misdemeanor. Further dissemination of the information provided pursuant to this section is prohibited other than to a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

Such home care organization or hospice shall, within 30 days of employment, obtain for any compensated employees an original criminal record clearance with respect to convictions for offenses specified in this section or an original criminal history record from the Central Criminal Records Exchange. The provisions of this section shall be enforced by the Commissioner. If an applicant is denied employment because of convictions appearing on his criminal history record, the home care organization or hospice shall provide a copy of the information obtained from the Central Criminal Records Exchange to the applicant.

The provisions of this section shall not apply to volunteers who work with the permission or under the supervision of a person who has received a clearance pursuant to this section.

B. A person who complies in good faith with the provisions of this section shall not be liable for any civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct.

C. A licensed home care organization or hospice shall notify and provide all students a copy of the provisions of this section prior to or upon enrollment in a certified nurse aide program operated by such home care organization or hospice. (1992, c. 844; 1993, cc. 17, 657; 1999, c. 637; 2003, c. 517; 2006, cc. 701, 764.)